

NOT DESIGNATED FOR PUBLICATION

Nos. 125,704
125,705

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

FREDERICK NOLAN DALE JR.,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; KEVIN M. SMITH, judge. Opinion filed March 24, 2023.
Affirmed.

Submitted by the parties for summary disposition pursuant to K.S.A. 2022 Supp. 21-6820(g) and
(h).

Before GREEN, P.J., HILL and COBLE, JJ.

PER CURIAM: Frederick Nolan Dale Jr. appeals the extension of his probation. We granted Dale's motion for summary disposition pursuant to Supreme Court Rule 7.041A (2022 Kan. S. Ct. R. at 48). The State did not contest the summary disposition of the appeal. Finding no abuse of discretion by the district court, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Dale was charged in two cases in Sedgwick County—20-CR-1846 and 20-CR-2600. Following a plea agreement, Dale pled guilty to three felony offenses, including

one count of possession of methamphetamine and one count of criminal possession of a weapon in 20-CR-1846, and one count of possession of methamphetamine in 20-CR-2600. On March 10, 2021, the district court sentenced Dale to 30 months' imprisonment. The district court granted Dale's motions for a downward departure and imposed a 12-month probation term.

About a year later, the State alleged Dale violated the terms of his probation by failing to report to his supervising officer, failing to complete a drug and alcohol evaluation, and failing to pay court costs. During the probation violation hearing, Dale admitted to the technical violations alleged by the State but stated that he could not comply because he was in custody in another case, which was not 20-CR-1846 or 20-CR-2600. The district court found Dale in violation of his probation terms and extended his probation 12 months starting May 31, 2022, when he was released from Kansas Department of Corrections custody.

Dale appealed. The cases were consolidated by the order of this court. Dale's attorney moved for summary disposition of appeal under Rule 7.041A. The State did not contest Dale's motion for summary disposition. This court granted the motion to decide the case without briefing.

ANALYSIS

Dale does not dispute his technical violations and did not dispute the extension of his probation during the probation violation hearing. He also acknowledges on appeal that the district court possessed the legal authority and discretion to extend his probation under K.S.A. 2020 Supp. 22-3716(c)(1)(A) and K.S.A. 2020 Supp. 21-6608(c)(8). He solely contends that the district court abused its discretion by unreasonably extending his probation.

Once a violation has been established, the decision to revoke probation is within the district court's sound discretion. *State v. Skolaut*, 286 Kan. 219, 227-28, 182 P.3d 1231 (2008). A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *State v. Ingham*, 308 Kan. 1466, 1469, 430 P.3d 931 (2018). Dale bears the burden of showing an abuse of discretion. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

Dale's felony conviction, coupled with his subsequent technical violations, authorized the district court to impose "[c]ontinuation or modification of the release conditions of the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction," under K.S.A. 2020 Supp. 22-3716(c)(1)(A). Likewise, K.S.A. 2020 Supp. 21-6608(c)(8) granted the district court the authority to "modify or extend the offender's period of supervision, pursuant to a modification hearing and a judicial finding of necessity."

Dale does not contend that the district court decision was based on an error of law or fact. Thus, abuse of discretion will only be found if no reasonable person would agree with the district court's decision. *State v. Jones*, 306 Kan. 948, Syl. ¶ 7, 398 P.3d 856 (2017). Dale fails to support his claim that the district court's decision to extend his probation was unreasonable.

Dale stipulated to his violations of the terms of his probation, even though he suggested he could not comply because he was in custody on a different case. Other than requesting that the court give him credit for his trustee hours and a letter stating that he completed treatment, Dale did not oppose any of the State's allegations during the violation hearing.

On review of the record, the district court's decision to extend Dale's probation was supported by the facts and the law. Because Dale violated the terms of his probation, along with his stipulation during the probation violation hearing, the extension of his probation by the district court was not arbitrary, fanciful, or unreasonable. Although Dale's imprisonment may have effectively prevented him from complying with the terms of his probation, that fact that he was placed under custody was fully within his control and is not an intervening factor. See, e.g., *State v. Kennedy*, No. 87,052, 2002 WL 35657694 (Kan. App. 2002) (unpublished opinion) (finding that district court did not abuse its discretion in revoking defendant's probation when defendant was incarcerated and unable to comply with the terms of his probation).

A reasonable person could agree that the district court's decision was well within its discretion. The district court gave Dale a second chance by granting probation resulting from a downward dispositional sentencing, and he violated those terms. As such, the district court did not abuse its discretion in extending Dale's probation.

Affirmed.